

United States Postal Service

§ 958.4

- 958.15 Post-hearing briefs.
- 958.16 Transcript of proceedings.
- 958.17 Initial decision.
- 958.18 Appeal of initial decision to Judicial Officer.
- 958.19 Form and filing of documents.
- 958.20 Service of notice of docketing and hearing, other documents.
- 958.21 Computation of time.
- 958.22 Continuances and extensions.
- 958.23 Settlement.

AUTHORITY: 39 U.S.C. 204; 39 U.S.C. 401; 39 U.S.C. 3001; 39 U.S.C. 3018.

SOURCE: 74 FR 18631, Apr. 24, 2009, unless otherwise noted.

§ 958.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

§ 958.2 Definitions.

As used in this part:

- (a) *Complaint* refers to the determination by the Determining Official that an individual has violated the prohibition against mailing hazardous materials and/or related violations under 39 U.S.C. 3018.
- (b) *Initial Decision* refers to the written decision which the Presiding Officer renders.
- (c) *Determining Official* refers to the Chief Postal Inspector or designee.
- (d) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or designee within the Judicial Officer Department.
- (e) *Party* refers to the Postal Service or the respondent.
- (f) *Person* refers to any individual, partnership, corporation, association, or private organization.
- (g) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing.
- (h) *Recorder* refers to the Recorder of the Judicial Office of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201-3078.
- (i) *Representative* refers to an attorney or other advocate.

(j) *Respondent* refers to any person determined by the Determining Official to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

§ 958.3 Petition for hearing.

Within 30 days of being served the Postal Service's Complaint alleging liability under 39 U.S.C. 3018, the respondent may request a hearing by filing a written Hearing Petition with the Recorder. The respondent's Petition must include the following:

- (a) The words "Petition for Hearing Related to Prohibitions Regarding the Mailing of Hazardous Material" or other words reasonably identifying it as such;
- (b) The name of the respondent as well as his or her work and home addresses, and work and home telephone numbers; and other address and telephone number where the respondent may be contacted about the hearing proceedings;
- (c) The date on which the respondent received the Complaint issued by the Determining Official;
- (d) A statement indicating whether the respondent requests an oral hearing or a decision solely on the written record;
- (e) If the respondent requests an oral hearing, a statement proposing a city for the hearing site, with justification for holding the hearing in that city, as well as recommended dates for the hearing; and
- (f) A statement admitting or denying each of the allegations of liability made in the Complaint, and stating any defense on which the respondent intends to rely.

§ 958.4 Referral of complaint.

- (a) If the respondent fails to request a hearing within the specified period, the Determining Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an Initial Decision based upon the information contained in the Complaint.
- (b) If the respondent files a Hearing Petition, the Determining Official, upon receiving a copy of the Petition,

§ 958.5

shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

§ 958.5 Scope of hearing; evidentiary standard.

(a) A hearing under this part shall be conducted by the Presiding Officer on the record:

(1) To determine whether the respondent is liable under 39 U.S.C. 3018, and

(2) If so, to determine the amount of any civil penalties, clean-up costs and/or damages to be imposed.

(b) The Postal Service must prove its case against a respondent by a preponderance of the evidence.

(c) The parties may offer for insertion onto the record such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 958.6 Notice of docketing and hearing.

(a) Within a reasonable time after receiving the respondent's Hearing Petition and the Complaint, the Presiding Officer shall serve upon the respondent and the Determining Official, a Notice of Docketing and Hearing.

(b) The Notice of Docketing and Hearing required by paragraph (a) of this section may include:

(1) The tentative site, date, and time of the oral hearing, if one is requested;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The nature of the hearing;

(4) The matters of fact and law to be decided;

(5) A description of the procedures governing the conduct of the hearing; and

39 CFR Ch. I (7–1–12 Edition)

(6) Such other information as the Presiding Officer deems appropriate.

§ 958.7 Hearing location.

An oral hearing under this part shall be held:

(a) In the judicial district of the United States in which the respondent resides or transacts business;

(b) In the judicial district of the United States in which the incident or incidents occurred upon which the determination of liability under 39 U.S.C. 3018 was made by the Determining Official; or

(c) In such other place as may be determined by the Presiding Officer.

§ 958.8 Rights of parties.

Subject to the sound discretion of the Presiding Officer, acting under § 958.9, parties to a hearing under this part shall have the right:

(a) To be accompanied, represented, and advised, by an attorney or representative of his or her own choosing;

(b) To participate in any conferences held by the Presiding Officer;

(c) To agree to stipulations of fact or law, which shall be made part of the record;

(d) To make opening and closing statements at the oral hearing;

(e) To present oral and documentary evidence relevant to the issues;

(f) To submit rebuttal evidence;

(g) To conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(h) To submit written briefs, proposed findings of fact, and proposed conclusions of law.

§ 958.9 Responsibilities and authority of presiding officer.

(a) The Presiding Officer shall conduct a fair and impartial hearing, avoid unnecessary delay, maintain order, and assure that a record of the proceeding is made.

(b) The Presiding Officer's authority includes, but is not limited to, the following:

(1) Establishing, upon adequate notice to all parties, the date and time of the oral hearing, if any, as well as, in accordance with § 958.7, selecting the hearing site;